



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 19 2006

Jack Davis
Jack Davis for Congress
P.O. Box 2004
Akron, NY 14001

Robert R. Davis, Treasurer
Jack Davis for Congress
P.O. Box 2004
Akron, NY 14001

RE: MUR 5726
Jack Davis
Jack Davis for Congress and Robert R. Davis,
in his official capacity as treasurer

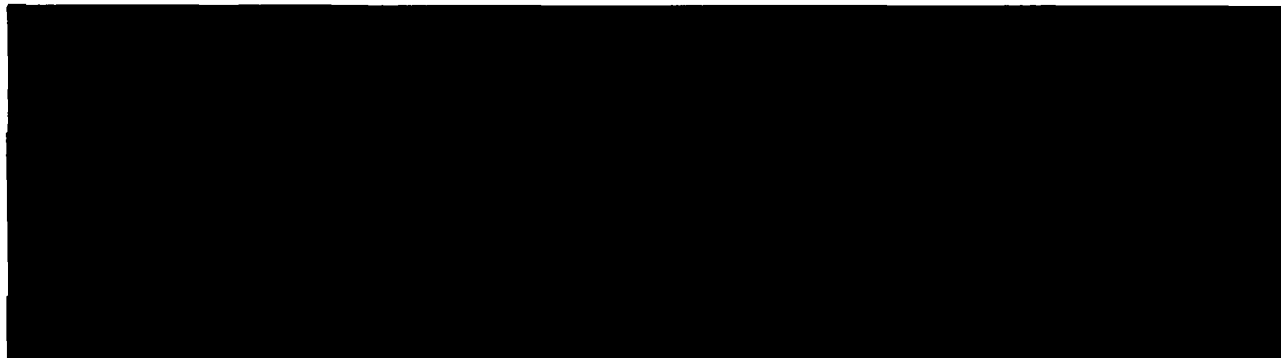
Dear Messrs. Davis:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Commission, on April 4, 2006, found that there is reason to believe Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a-1(b)(1)(C) and 441a-1(b)(1)(D), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 400.21(b) and 400.22(b). Additionally, the Commission found that there is reason to believe that Jack Davis violated 2 U.S.C. §§ 441a-1(b)(1)(C) and 441a-1(b)(1)(D). The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be

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submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.



Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Zachary Mahshie, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Toner".

Michael E. Toner
Chairman

Attachments

1. Davis Factual and Legal Analysis
2. Jack Davis for Congress Factual and Legal Analysis
3. [REDACTED]
4. Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jack Davis

MUR: 5726

I. INTRODUCTION

This matter was initiated by the Federal Election Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. This matter concerns new reporting requirements, arising under the so-called "millionaires' amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of certain thresholds.

II. FACTUAL SUMMARY

Jack Davis declared his candidacy for New York's 26th District seat in the United States House of Representatives to the Federal Election Commission on March 18, 2004, by filing an FEC Form 2, Statement of Candidacy. As part of the Form 2, Mr. Davis declared his intention to spend \$500,000 in personal funds on the general election. Mr. Davis ran unopposed in the Democratic primary, but he lost in the general election on November 2, 2004.¹

Mr. Davis started to spend personal funds on his campaign on March 18, 2004 with a \$10,000 contribution. On March 31, 2004, he made his only other direct contribution to his campaign, in the amount of \$7,280. Between March 31 and October 22, 2004, Mr. Davis made loans to his committee, Jack Davis for Congress, ("the Committee") totaling \$1,240,000, which increased his total personal expenditures to \$1,257,280. All contributions and loans from the

¹ Although a news report indicates Mr. Davis intends to run in 2006, the Committee reported negligible activity, and no contributions, during 2005. Krestia DeGeorge, *Congressional races: Monroe in the spotlight?*, Rochester City

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candidate's personal funds were designated for the general election. The following chart outlines all disclosed contributions and loans made by Mr. Davis to the Committee:²

March 18, 2004	\$10,000	Contribution	\$10,000
March 31, 2004	\$7,280	Contribution	\$17,280
March 31, 2004	\$100,000	Loan	\$117,280
May 11, 2004	\$50,000	Loan	\$167,280
June 7, 2004	\$40,000	Loan	\$207,280
August 6, 2004	\$60,000	Loan	\$267,280
August 11, 2004	\$80,000	Loan	\$347,280

Neither Mr. Davis nor the Committee filed an initial notification or any additional notifications (FEC Form 10s) with the Commission or with Mr. Davis's opponents disclosing his expenditures from personal funds.

The Reports and Analysis Division sent Requests For Additional Information to the Committee on October 21, November 16, and December 23, 2004, requesting explanations for the non-filed FEC Form 10s. On December 20, 2004, the Commission received a letter from the Committee explaining that its failure to file any Form 10s was "a direct result of [its] inexperience in filing requirements for a congressional candidate" and that "there was no intent

Newspaper, February 1, 2006 (available at <http://www.rochester-citynews.com/gyrobase/Content?oid=oid%3A4170> (last visited February 27, 2006)).

² In addition to the six quarterly and election reports it was required to file, the Committee also filed eight amended reports to correct errors in its original filings. However, the only amended filing that involved Mr. Davis's expenditures was the April 2004 Quarterly report. This amended report removed two candidate contributions in the amounts of \$2,500 and \$3,500, and added a single contribution in the amount of \$7,280.

to conceal facts or to mislead the FEC.” Miscellaneous Report to FEC, Jack Davis for Congress (December 20, 2004).

III. LEGAL ANALYSIS

When a candidate to the U.S. House of Representatives makes aggregate expenditures from personal funds of \$350,000 or more for an election, the candidate or his or her authorized committee shall file a notification of the expenditure (FEC Form 10) within 24 hours of exceeding the threshold.³ 2 U.S.C. § 441a-1(b)(1)(C). For each additional expenditure of \$10,000 or more, the candidate is required to file an additional notification within 24 hours. 2 U.S.C. § 441a-1(b)(1)(D). These notifications must be filed with the Commission, each candidate in the same election, and the national party of each such candidate and must include, among other things, the date and amount of the expenditures and the total amount expended as of the date of the filing.⁴ 2 U.S.C. §§ 441a-1(b)(1)(E) and (F). Although FEC Form 10 is signed by the committee treasurer, the candidate is responsible for ensuring that it is filed in a timely manner. See 11 C.F.R. § 400.25.

An \$80,000 loan made by Mr. Davis on September 2, 2004 caused his total personal expenditures for the general election to exceed \$350,000. By exceeding the threshold, the

³ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by a candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 441a-1(b)(1)(A). There is a separate \$350,000 threshold for the primary and general elections. 11 C.F.R. § 400.2(b). However, as discussed above, Mr. Davis designated all of his contributions and loans as being for the general election. *Supra*, Section II.

⁴ A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). See 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41. Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000. The opposition personal funds amount is distinct from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a-1(a)(2); 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. See 2 U.S.C. § 441a-1(a)(2)(B)(ii); 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. See

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Committee and candidate were obligated to file FEC Form 10, Notification of Expenditures from Personal Funds, with the Commission and send copies to Mr. Davis's opponents within 24 hours of the threshold expenditure, or by September 3, 2004. 2 U.S.C. § 441a-1(b)(1)(C). However, Mr. Davis and the Committee completely failed to file a Form 10 with the Commission or send copies to his opponents. Therefore, this Office recommends that the Commission find reason to believe that Jack Davis violated 2 U.S.C. § 441a-1(b)(1)(C). In addition, Mr. Davis and the Committee failed to file additional FEC Form 10s regarding six additional loans in excess of \$10,000 made by Mr. Davis to the Committee between September 17 and October 22, 2004. Therefore, this Office recommends that the Commission find reason to believe that Jack Davis violated 2 U.S.C. § 441a-1(b)(1)(D).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jack Davis for Congress, and
Robert R. Davis, in his official
capacity as treasurer

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threshold expenditure, or by September 3, 2004. 2 U.S.C. § 441a-1(b)(1)(C). However, the Committee completely failed to file a Form 10 with the Commission or send copies to his opponents. Therefore, there is reason to believe that Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b). In addition, the Committee failed to file additional FEC Form 10s regarding six additional loans in excess of \$10,000 made by Mr. Davis to the Committee between September 17 and October 22, 2004. Therefore, there is reason to believe that Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b).